

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CARLOS PETERSON,

Plaintiff,

v.

**9:10-CV-26
(FJS/DEP)**

**CORRECTIONAL OFFICER JOHNSON,
Onondaga County Justice Center,**

Defendant.

APPEARANCES

OF COUNSEL

**CARLOS PETERSON
08-B-3052**

Clinton Correctional Facility
P.O. Box 2002
Dannemora, New York 12929

**OFFICE OF THE ONONDAGA
COUNTY ATTORNEY**

John H. Mulroy Civic Center
421 Montgomery Street, 10th Floor
Syracuse, New York 13202

KAREN ANN BLESKOSKI, ACA

SCULLIN, Senior Judge

ORDER

Currently before the Court are Magistrate Judge Peebles' August 3, 2011 Report and Recommendation, *see* Dkt. No. 39, and Plaintiff's objections thereto, *see* Dkt. No. 40.¹

Plaintiff commenced this action pursuant to 42 U.S.C. § 1983 alleging that Defendant violated his civil rights while he was housed in the Onondaga County Justice Center. In his

¹ After Plaintiff submitted his objections, Defendant filed a response to those objections, *see* Dkt. No. 41; and Plaintiff submitted two supplemental objections, *see* Dkt. Nos. 42, 44. The Court has considered all of these documents.

complaint, Plaintiff asserted that Defendant harassed him and failed to protect him from an alleged attack at the hands of another inmate.

On December 17, 2010, Defendant filed a motion for summary judgment seeking dismissal of Plaintiff's complaint on the grounds that (1) Plaintiff had not exhausted his administrative remedies; (2) the undisputed facts demonstrated that Plaintiff could not establish a viable Eighth Amendment claim; and (3), even if Plaintiff could establish such a claim, Defendant was entitled to qualified immunity.

In a Report and Recommendation dated August 3, 2011, Magistrate Judge Peebles recommended that this Court grant Defendant's motion for summary judgment and dismiss Plaintiff's complaint in its entirety. *See* Dkt. No. 39 at 33-34. Plaintiff objected to Magistrate Judge Peebles' recommendation, arguing that "[t]his case has a bigger picture [sic] other than the exhaust [sic] of remedies [and that although he] may . . . not exhausted [his] remedies . . . it doesn't switch the actual burden of fact around in this case." *See* Dkt. No. 40 at 1.

In reviewing a magistrate judge's report and recommendation, the district court may decide to accept, reject or modify the recommendations therein. *See* 28 U.S.C. § 636(b)(1). The court conducts a *de novo* review of the magistrate judge's recommendations to which a party objects. *See Pizzaro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991). ""If, however, the party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error."" *Salmini v. Astrue*, No. 3:06-CV-458, 2009 WL 1794741, *1 (N.D.N.Y. June 23, 2009) (quoting [*Farid v. Bouey*, 554 F. Supp. 2d 301] at 306 [(N.D.N.Y. 2008)] (quoting *McAllan v. Von Essen*, 517 F. Supp. 2d 672, 679 (S.D.N.Y. 2007))). Finally, even if the parties file no objections, the court must ensure that

the face of the record contains no clear error. *See Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quotation omitted).

The Court has thoroughly reviewed Plaintiff's objections to Magistrate Judge Peebles' recommendations and finds them to be without merit. For the most part, Plaintiff's objections are conclusory. Furthermore, he acknowledges that he did not exhaust his administrative remedies. Finally, he totally ignores the fact that, in addition to finding that Plaintiff had failed to exhaust his administrative remedies, Magistrate Judge Peebles also found that Plaintiff's claims lacked merit and recommended granting Defendant's motion on this ground as well.

Despite the many deficiencies in Plaintiff's objections, the Court conducted a *de novo* review of Magistrate Judge Peebles' Report and Recommendation in light of those objections. Have completed that review, the Court hereby

ORDERS that Magistrate Judge Peebles' August 3, 2011 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendant's motion for summary judgment is **GRANTED**; and the Court further

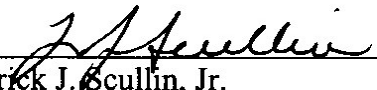
ORDERS that Plaintiff's complaint is **DISMISSED in its entirety**; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Defendant and close this case; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 27, 2012
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge